SUPREME COURT
FILED
MAY 29 2003

No. 03 183

IN THE

Supreme Court of the United States

JESSE WOODROW SHOTTS,
Petitioner,

v.

MICHAEL RASMUSSEN, alias Mr. Mike, et al.,
Respondent.

ON PETITION FOR A WRITE OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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15 pp

QUESTION PRESENTED FOR REVIEW

Are federal prosecutors and federal co-conspirators entitled to absolute immunity for constitutional violations of prisoner rights and retaliating against prisoners for accessing court?

PARTIES TO PROCEEDING

MICHAEL RASMUSSEN, alias Mr. Mike;
YVONNE ALEXANDER;
RON MOSES;
RODNEY ROBINSON;
CYNTHIA MCGOUGH;
DR. LUIS A. BERRIOS;
JENNIFER MERKLE;
LARRY SPENCER;
ERIC DRYDEN;
DEBRA RANKIN;
RANDY STILES;
MS. BLANKENSHIP;
Lt. W. HUTCHINGS;
C. THOMPSON, alias Black Widow;
DR. GEORGE HILL;
HONORIO DELA CRUZ;
ART DIZON;
WARDEN R. WILEY; and
DR. CARLA THOMAS.

STATEMENT PURSUANT TO RULE 29.6

There is no publicly held company involved in this litigation.

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U.S. Const., Amend., VIII ..... passim

28 U.S.C. § 1254 1

PRIOR OPINIONS

The opinion of the District Court of the Northern District of Alabama is unreported and is reproduced in the Appendix at App. 1. The opinion of the Court of Appeals for the Eleventh Circuit is unreported and is reproduced at App. 4.

JURISDICTION OF THIS COURT

The Opinion of the Court of Appeals was filed on February 28, 2003.

This Court has jurisdiction to review the judgment of the Court of Appeals pursuant to 28 U.S.C. § 1254.

CONSTITUTIONAL ISSUES INVOLVED

U.S. Const., Amend. I., V., and VIII provides, in relevant part:

I. To petition the government for a redress of grievances.

V. Nor be deprived of life, liberty, or property without due process of law.

VIII. Nor cruel and unusual punishments inflicted.

STATEMENT OF THE CASE

Appellant appealed his criminal convictions which is reported at 145 F.3d 1289 and the court reversed the mail fraud conviction and ordered a new sentence. Appellant reported to the BOP, the Talladega Prison Camp and received a severe back injury while working in violation of his work limitations. After subpoenaing the medical records and medical personnel for the re-sentencing, the prison authorities placed the appellant in SHU.

While incarcerated, the medical staff refused to treat the severe back jury and sent numerous letters denying the severity of the injury, including a letter to the prosecutor to be used at re-sentencing.

On appeal, the Court of Appeals for the Eleventh Circuit affirmed the decision.

REASONS FOR GRANTING THE WRIT

THIS COURT SHOULD GRANT CERTIORARI TO CORRECT A DECISION THAT ESTABLISHES ABSOLUTE IMMUNITY FOR FEDERAL GOVERNMENT OFFICIALS CONTRARY TO CONSTITUTIONAL PRECEDENT OF THE SUPREME COURT.

The complaint has multiple federal employee defendants for multiple violations of clearly established constitutional rights. The previous decisions were based upon the determination that the plaintiff could not overcome the various immunities that the defendants possess, thus placing federal defendants on a plateau that is not obtainable for liability and creating absolute immunity by practice for all "Bivens" actions. The complaint set forth the violations by separate groups and affixed as exhibits documentation that proved the violations by a preponderance of the evidence. The activity of Assistant United States Attorney Michael Rasmussen and Probation Officers Cynthia McGough and Yvonne Alexander was investigative and or administrative and not protected by absolute immunity, nor qualified immunity, see Mitchell v. Forsyth, 472 U.S. 511, and Buckley v. Fitzsimmons, 509 U.S. 259. The retaliations of Rasmussen, McGough and Alexander for access to the court is a violation of clearly established constitutional rights of which a reasonable person would have known, see Harlow v. Fitzgerald, 475 U.S 800 and Cruz v. Beto, 405 U.S. 319, 31 .Ed.2d, 263, 92 S.Ct. 1079; and absolute nor qualified immunity would protect them from liability for their conduct. Not only did these defendants conspire to deny a transfer to Community Correction Facility, they also retaliated against the plaintiff for having appealed his convictions and gotten

a reversal on several counts. See Cruz v. Beto, 405 U.S. 319, 31 L.Ed.2d, 263, 92 S.Ct. 1079.

This court has prohibited the fabrication of evidence and testimony for many years and the prior decision allows absolute immunity for defendants Berrios, Merkle, Wiley, Dela Cruz and Dizon for the fabrication of testimony and assistance in preparing testimony. This is contrary to Buckley v. Fitzsimmons, 509 U.S. 259. While giving testimony is entitled to absolute immunity, the preparation of fabricated testimony is not protected by immunity and the individuals are not entitled to absolute nor qualified immunity.

The medical staff at Talladega Prison Camp fraudulently communicated the medical condition of the plaintiff to the warden and the Assistant United States Attorney. After the chief medical person was exposed by the plaintiff, the plaintiff was placed in the Segregated Housing Unit and forced to sleep on a concrete floor (all the medical staff was aware that the plaintiff has suffered a herniated disc while working at Talladega), causing the unnecessary and wanton infliction of pain in violation of clearly established constitutional rights that a reasonable official would understand that he is violating that right.

" '[T]he unnecessary and wanton infliction of pain...constitutes cruel and unusual punishment forbidden by the Eighth Amendment.' " Whitley v. Albers, 475 U.S. 312, 319 (1986) (some internal quotation marks omitted). We have said that "[a]mong 'unnecessary and wanton' inflictions of pain are those that are 'totally without penological justification.' " Rhodes v. Chapman, 452 U.S. 337, 346 (1981). In making this determination in the context of prison conditions, we must ascertain whether the officials involved acted with "deliberate indifference" to the inmates' health or safety. Hudson v. McMillan, 503 U.S. 1, 8 (1982). We may infer the existence of this subjective state of mind from the fact that the risk of harm is obvious. Farmer v. Brennan, 511 U.S. 825, 842 (1994).

To allow the "Bivens" defendants absolute immunity would return our legal system to the 19th Century. The United States has become a beacon for the World in Human Rights to allow a federal official to commit any corrupt act without accountability would tarnish that image.

CONCLUSION

For the reasons stated, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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Counsel of Record

APPENDIX

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

JESSE WOODROW SHOTTS	}	
	}	
Plaintiff,	}	
	}	CIVIL ACTION NO.
v.	}	02-AR-1343 -S
	}	
MICHAEL RASMUSSEN, et al.,	}	
	}	
Defendants.	}	

MEMORANDUM OPINION

To memorialize the oral rulings announced on September 19, 2002, during argument on all then pending motions except the motion for summary judgment filed by Keeton Corrections, Inc., the second motion to amend filed on September 19, 2002, by plaintiff, Jesse Woodrow Shotts ("Shotts"), was granted, the complaint, as thus amended, was deemed filed, and all defendants' motions to dismiss were deemed re-filed, addressed to the complaint as last amended. The argument proceeded on that basis.

Shotts sues a number of defendants under *Bivens,* 42 U.S.C. §1983, 42 U.S.C. § 1985, and the Racketeer Influenced and Corrupt Organizations Act ("RICO"). The alleged conspiracy and varied sub-events complained of occurred while Shotts was a federal prisoner under judgment for a felony conviction in this court. The defendants include a federal prosecutor, two probation officers of this court, federal prison medical personnel, and federal correctional officers. That these loosely related defendants somehow got together and formed a conspiracy to deny Shotts various of his Constitutional rights is difficult to conceive of, but the court supposes that it is theoretically possible. Unfortunately Shotts, his invocation of § 1983, § 1985 and RICO are clearly

inapposite. These statutes simply do not fit the factual allegations of his complaint, no matter how tolerantly construed. This leaves him with *Bivens,* which he invoked for the first time on September 19, 2002.

It goes without saying that if defendants, or any of them, deliberately undertook to persecute or to mistreat Shotts because of the partially successful appeal of this conviction, it would be a shameful act. But, the motions to dismiss only call for the court to ascertain whether or not Shotts' has stated a claim upon which he can proceed in this court and upon which any of the relief he seeks can be granted. The court is not called upon to conduct a broad investigation of prison conditions and procedures.

There is so much wrong with Shotts' shotgun complaint that the court chooses not to try to analyze it or to criticize it paragraph by paragraph. In all of its convoluted aspects it attempts to combine in one act ion every complaint about every person who did something that Shotts did not like during his incarceration, whether physical or procedural. Shotts is angry. However, insurmountable obstacles in Shotts' path are the judicial, prosecutorial, sovereign and qualified immunities enjoyed in varying degrees by the various defendants. Without repeating the points articulated in defendants' motions to dismiss, they are well taken, and for the reasons therein stated and discussed during oral argument, the said motions are due to be granted and will be granted by separate order. A lengthy opinion would add nothing but insult to the alleged injuries sustained by Shotts.

DONE this 26th day of September, 2002.

WILLIAM M ACKER, JR.
UNITED STATES DISTRICT JUDGE

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 02-15904
Non-Argument Calendar

D. C. Docket No. 02-0 1 343-CY-AR-S

JESSE. WOODROW SHOTTS,

Plaintiff-Appellant,

versus

KEETON CORRECTIONS, INC.,

Defendant,

MICHAEL RASMUSSEN, a/k/a. Mr. Mike,
GEORGE HILL, Dr., et al.,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Alabama

(February 28. 2003)

Before CARNES, WILSON and COX, Circuit Judges.
PER CURIAM:

Shotts appeals the district court's dismissal of his claims brought under 42 V.S.C. § 1983,42 V.S.C. § 1985, 18 V.S.C. § 1962 (RICO), and *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388, 9 I S. Ct. 1999 (1971). Shotts, a former attorney currently incarcerated for witness tampering, bases his § 1983 and *Bivens* claims on alleged violations of his First Amendment, Fifth Amendment, and Eighth Amendment rights. The named defendants include the United States of America, numerous federal employees (an Assistant United States Attorney, two federal probation officers, a legal advisor to the federal Bureau of Prisons, a former warden at the Talladega Federal Correctional Institution, and thirteen BOP employees), two non-federal employees, and one non- federal entity (Keeton Corrections, Inc.).

Having reviewed the complaint and the briefs, we agree that the factual allegations set forth in Shotts's complaint clearly fail to set forth any claim under § 1983, § 1985 and RICO, and these claims do not warrant discussion. Turning to Shotts's *Bivens* claims against the federal defendants, we conclude that Assistant United States Attorney Rasmussen and Probation Officers McGough and Alexander are entitled to immunity. *See Elder v. Athens-Clarke County, Georgia Through O'Looney,* 54 F.3d 694, 695 (11th Cir. 1995); *Spaulding v. Nielsen,* 599 F.2d.728, 729 (5th Cir. 1979). Likewise, Berrios, Merkle, Wiley, Del a Cruz, and Dizon are entitled to immunity for their testimonial acts and their assistance in preparing testimony. *Scarbrough v. Myles,* 245 F.3d 1299, 1305 (11th Cir. 2001); *Jones v. Cannon,* 174 F.3d 1271, 1288-89 (11th Cir. 1999). Contrary to Shotts's argument,it was entirely appropriate for the district court to dismiss these claims on immunity grounds pursuant to a 12(b)(6) motion. *See, e.g., Long v. Satz,* 181 F.3d 1275, 1279 (11th Cir. 1999).

Because the federal defendants might be entitled to qualified immunity with respect to the other alleged constitutional violations that underlie Shotts's *Bivens* claims, Shotts must satisfy our requirement of heightened specificity in pleading civil rights actions against public officials. *Magluta v. Samples,*

256 F.3d 1282, 1284 (11 th Cir. 2001). We agree with the defendants that most of Shotts's allegations fail to satisfy the heightened pleading requirement, and even those allegations that might satisfy the requirement fail to sufficiently allege constitutional violations. Accordingly, we affirm the district court's order granting the defendants' motions to dismiss.

AFFIRMED.

Supreme Court, U.S.
FILED
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No. 03-183

In The

Supreme Court of the United States

JESSE WOODROW SHOTTS,

Petitioner,

v.

MICHAEL RASMUSSEN, alias Mr. Mike, et al.,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

BRIEF IN OPPOSITION FOR RESPONDENT DR. CARLA THOMAS

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QUESTION PRESENTED

Whether this Court should consider a Petition for Writ of Certiorari challenging the Court of Appeals' dismissal of certain Respondents on immunity grounds when (1) Petitioner has not met the jurisdictional requirements pursuant to 28 U.S.C. §1254 and (2) all of the claims asserted against this Respondent were dismissed for failure to state a claim and not on immunity grounds.

PARTIES TO THE PROCEEDING

Petitioner is Jesse Woodrow Shotts, the plaintiff in the lawsuit filed in the United States District Court for the Northern District of Alabama. This Respondent is Dr. Carla Thomas, a licensed physician, and one of the defendants in this lawsuit. The other named Respondents/ Defendants are Michael Rasmussen, Yvonne Alexander, Ron Moses, Rodney Robinson, Cynthia McGough, Dr. Luis A. Berrios, Jennifer Merkle, Larry Spencer, Eric Dryden, Debra Rankin, Randy Stiles, Ms. Blankenship, Lieutenant W. Hutchings, C. Thompson, Dr. George Hill, Honorio Dela Cruz, Art Dizon, and Warden R. Wiley.

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OPINIONS BELOW

The opinion of the District Court of the Northern District of Alabama is contained in the Appendix to the Petition for a Writ of Certiorari filed by Jesse Woodrow Shotts, Petitioner in this matter. The opinion of the Court of Appeals for the Eleventh Circuit is also contained in the Appendix to the Petition for a Writ of Certiorari.

STATEMENT OF JURISDICTION

Respondent disputes Petitioner's claim that this Court has jurisdiction pursuant to 28 U.S.C. § 1254, as explained in the Reasons for Denying Petition.

CONSTITUTIONAL PROVISIONS INVOLVED

Respondent disputes Petitioner's claim that this case involves U.S. Constitutional Amendments I, V, and VIII, as explained in the Reasons for Denying Petition.

STATEMENT OF THE CASE

Respondent Dr. Carla Thomas submits that the Petition for Writ of Certiorari ("Pet.") filed by Petitioner Jesse Woodrow Shotts is due to be denied.

I. Course of the Proceedings

On June 25, 1996, Petitioner, Jesse Woodrow Shotts ("Shotts"), was sentenced to a sixty-month custodial term following felony convictions for conspiracy to commit mail

fraud, mail fraud, witness tampering, and perjury. *See United States v. Shotts*, 145 F.3d 1289 (11th Cir. 1998). On appeal to the United States Court of Appeals for the Eleventh Circuit, the conspiracy, mail fraud, and perjury convictions were reversed. *Id.* The case was subsequently remanded for resentencing relating to Shotts's witness tampering conviction. *Shotts*, 145 F.3d at 1303 (11th Cir. 1998). Thereafter, on January 6, 2000, Shotts was re-sentenced to a custodial term of nineteen months.

On May 31, 2002, Shotts filed a Complaint in the United States District Court for the Northern District of Alabama. In his Complaint, Shotts alleges that twenty-one defendants violated various federal statutes against him while he was incarcerated at Talladega Federal Prison Camp. The named defendants include the United States of America, a federal prosecutor, two federal probation officers, federal correctional officers, Keeton Corrections, Inc. and medical personnel. (Pet. App. at 4). Dr. Carla Thomas is one of the physicians Shotts has sued in this lawsuit.[1]

On August 13, 2002, Dr. Thomas filed a Motion to Dismiss Shotts's Complaint for lack of jurisdiction and failure to state a claim upon which relief can be granted. After entertaining oral argument on Dr. Thomas's Motion to Dismiss and other pending motions, the District Court dismissed Shotts's Complaint with prejudice on September 26, 2002 in a Memorandum Opinion. (*See* Pet. App. at 1).

---

[1] Dr. Thomas is a board certified family practitioner who practices in private practice in Anniston, Alabama. At all times relevant to the present litigation, Dr. Thomas also worked as a contract physician for the Talladega Federal Prison Camp in Talladega, Alabama.

In dismissing Shotts's lawsuit against Dr. Thomas, the District Court noted the "convoluted" nature of Shotts's "shotgun complaint" and recognized the incongruity between the factual allegations and the federal statutes asserted in his Complaint. *Id.*

On October 10, 2002, Shotts filed notice that he was appealing the District Court's September 26, 2002 Order. The Court of Appeals for the Eleventh Circuit affirmed the District Court's ruling in its Opinion dated February 28, 2003 and this matter is presently before this Court on Shotts's Petition for a Writ of Certiorari. (*See* Pet. App. at 3).

II. Statement of Facts

On March 7, 2000, Shotts was incarcerated at the Talladega Federal Prison Camp for service of a federal sentence for a felony conviction of witness tampering. At the prison, Shotts's work assignment was with the correctional institute's garage, where he was supervised by Rodney Robinson ("Robinson"). On May 31, 2000, Shotts reported for work and was directed by Robinson to check the mileage on the government vehicles located on the prison grounds. Shotts alleges that, while performing this task, he injured his back. (Pet. at 1). Shotts was diagnosed with bulging and herniated discs.

Dr. Carla Thomas is a licensed physician who worked at the Talladega Prison Camp once a week during the time period relevant to the present litigation. Dr. Thomas was involved in treating Shotts after his back injury in May of 2000. At some point following his injury, Shotts was scheduled to appear before the resentencing commission. Prior to this appearance, Shotts attempted to persuade Dr.

Thomas and other members of the prison medical staff to testify on his behalf in hopes of obtaining a reduced sentence. Shotts issued checks to Dr. Thomas and others on the medical staff requesting that they serve as witnesses at his resentencing.[2] Sometime thereafter, Shotts was accused of witness tampering and placed in the segregated housing unit at the prison. He spent twenty-six days in the segregated housing unit.

Shotts alleges that while he was in segregated housing, Dr. Thomas and others conspired to deprive him of proper medical care. (Pet. at 2-3). Shotts contends he was forced to sleep on the floor and was refused treatment of his herniated discs, all in retaliation for allegedly subpoenaing Dr. Thomas and others.

On or around June 28, 2001, Shotts was transferred from the Talladega Federal Prison Camp to a Community Correctional Center. Shotts completed his sentence and was released from the Community Correctional Center on September 4, 2001.

REASONS FOR DENYING THE WRIT

Petitioner asks this Court to grant Certiorari in this case pursuant to 28 U.S.C. § 1254. Shotts asserts that the issue for this Court's review is the erroneous decisions by the District Court and the Court of Appeals in dismissing

[2] While Dr. Thomas disputes that a subpoena accompanied this check, this factual dispute is not material to this Court's determination of whether to grant the Petition.

his claims based on his failure to overcome the qualified and absolute immunities of some of the named defendants. This is Shotts only grounds for seeking this writ of certiorari. (Pet. at 2).

With regard to Dr. Thomas, this Court should not exercise jurisdiction over this Petition because the stated issue on appeal does not apply to Dr. Thomas. This Court has repeatedly stated that jurisdiction to review judgments of courts of appeals by certiorari was to be exercised sparingly, and only in cases of gravity and general importance, or in order to secure uniformity of decision. *See Magnum Import Co. v. Coty,* 262 U.S. 159 (1923); *Ohio ex rel. Seney v. Swift & Co.*, 260 U.S. 146 (1922); *Hamilton-Brown Shoe Co. v. Wolf Bros. & Co.*, 240 U.S. 251 (1916). This Court should not consider the claims of the Petitioner on jurisdictional grounds. Supreme Court Rule 10 provides:

> A petition of certiorari will be granted only for compelling reasons. The following, although neither controlling nor fully measuring the Court's discretion, indicate the character of the reasons the Court considers:
>
> * * *
>
> (b) a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals;
>
> (c) a state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important

> federal question in a way that conflicts with relevant decisions of this Court.

SUP. CT. R. 10.

In *Fields v. United States*, 205 U.S. 292 (1907), this Court, in finding there was no sufficient ground for certiorari, stated:

> However important the case may be to the applicant, the question involved is not one of gravity and general importance. There is no conflict between the decisions of state and Federal courts or between those of Federal courts of different circuits. There is nothing affecting the relations of this nation to foreign nations, and indeed no matter of general interest to the public.

Id. at 296.

In rejecting the Petitioner's claims below and affirming the opinion of the District Court, the Court of Appeals' clear and well-reasoned opinion evidences a correct interpretation of the law and demonstrates why this Petition for Writ of Certiorari should be denied. Petitioner attempted to assert claims in his Petition under 42 U.S.C. § 1983, 42 U.S.C. § 1985, 18 U.S.C. § 1962 (RICO), and *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388, 91 S. Ct. 1999 (1971). Petitioner now seeks review of the Court of Appeals' decision to affirm the District Court's dismissal of Petitioner's claims against the certain named defendants on immunity grounds pursuant to a 12(b)(6) motion. Petitioner argues that the Court of Appeals' opinion is contrary to constitutional precedent. (Pet. at 2). The immunity defenses, however, are applicable only to the named defendants who raised them. Dr. Thomas has never raised immunity as a

defense in the course of this litigation, rather the claims were dismissed against Dr. Thomas for failure to state a claim. Shotts devotes all of his Petition to the topic of immunity without setting forth any argument that would explain how Dr. Thomas, a defendant who has not raised an immunity defense, falls under the jurisdiction of this Court. In fact, Shotts has failed to challenge the dismissal of his claims against Dr. Thomas in his Petition. Accordingly, Shotts's Petition should be denied with regard to Dr. Thomas.

The District Court and the Court of Appeals found Petitioner's arguments to be convoluted in its attempts to assert a cause of action against any of the parties in this lawsuit, including Dr. Thomas. (Pet. App. 1-5). As set forth in the District Court's Memorandum Opinion and the Court of Appeals' Opinion, the accusations of Shotts's Complaints were insufficient to establish the essential elements of a claim under any of the various federal statutes or provisions Shotts purported to invoke.[3] As set forth in these opinions, the claims against Dr. Thomas were properly dismissed on grounds other than the immunity issues Shotts raises in his Petition. Dr. Thomas never raised an immunity defense and consequently, the Petition for Writ of Certiorari in this case is due to be denied on jurisdictional grounds because the application comes

[3] The District Court's opinion stated: "Without repeating the points articulated in defendants' motions to dismiss, they are well taken, and for the reasons therein stated and discussed during oral argument, the said motions are due to be granted and will be granted by separate order. A lengthy opinion would add nothing but insult to the alleged injuries sustained by Shotts." (Pet. App. at 2).

within none of the conditions specified for this Court's review of the Court of Appeals' decision.

CONCLUSION

WHEREFORE, because the courts below have properly interpreted the law and this Court's precedent and because there is no jurisdictional basis for Petitioner's claims, this Respondent respectfully requests this Court to deny the Petition for Writ of Certiorari.

Respectfully submitted,

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No. 03-183

In The
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JESSE WOODROW SHOTTS,

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v.

MICHAEL RASMUSSEN, YVONNE ALEXANDER, RON MOSES, RODNEY ROBINSON, CYNTHIA MCGOUGH, DR. LUIS A. BERRIOS, JENNIFER MERKEL, LARRY SPENCER, ERIC DRYDEN, DEBRA RANKIN, RANDY STILES, MS. BLANKENSHIP, LT. W. HUTCHINGS, C. THOMPSON, alias BLACK WIDOW, DR. GEORGE HILL, ONORIO DELA CRUSE, ART DIZON, WARDEN R. WILEY and DR. CARLA THOMAS,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

BRIEF IN OPPOSITION FOR RESPONDENT DR. GEORGE HILL

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QUESTION PRESENTED

1. Whether this Court should grant a writ of certiorari in this case, which is based on allegations that a doctor who treated a prison inmate pursuant to a contract with the prison authorities should be held liable for Eighth Amendment violations for allegedly prescribing medication and other treatment that the prisoner believed was inadequate, and for allegedly communicating to the prison authorities a fraudulent diagnosis.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 29.6 of the Rules of the Supreme Court of the United States, Respondents respectfully submit this Corporate Disclosure Statement.

No publicly held company is involved in this litigation.

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Supreme Court Rule 10 2

BRIEF IN OPPOSITION FOR RESPONDENT

Respondent, Dr. George Hill (hereinafter "Dr. Hill") submits that the Petition for Writ of Certiorari ("Pet.") filed by Petitioner is due to be denied.

STATEMENT OF THE CASE

Dr. Hill respectfully advises this Court that the Petition mischaracterizes the facts of this case. In particular, the Petitioner claims that "the medical staff [presumably including Dr. Hill] refused to treat the [Petitioner's] severe back injury and sent numerous letters denying the severity of the injury, including a letter to the prosecutor to be used at re-sentencing." (Pet. at 2). As the record in this case shows, and as the Petitioner's pleadings to the Courts below illustrate, Dr. Hill did not refuse to treat the Petitioner; he merely diagnosed the Petitioner with a condition less serious than the one the Petitioner believed he had, and prescribed a treatment that the Petitioner believed dealt inadequately with his symptoms.

The Petitioner failed to set out in his Statement of the Case to this Court that both the district court and the Court of Appeals for the Eleventh Circuit found that the Petitioner completely failed to state any claim under 42 U.S.C. § 1983, 42 U.S.C. § 1985, or the Racketeer Influenced and Corrupt Organizations Act.

SUMMARY OF THE ARGUMENT

The Petitioner has failed to set out circumstances that would justify the issuance of a writ of certiorari in this

matter. The allegations he makes against Respondent Dr. George Hill amount to state law claims of malpractice and fraud rather than constitutional violations, and should more properly be addressed in a state court.

REASONS FOR DENYING THE WRIT

I. The Petition Fails to Set Out Reasons Justifying a Grant of Certiorari in this Matter.

This Court does not ordinarily grant a writ of certiorari to review the decision of a United States court of appeals unless the Petition alleges either that the decision conflicts with decisions of other circuits, that it conflicts with a decision by a state court of last resort, or that the court "has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory powers." *S.Ct.R. 10(a)*. The Petitioner has failed to allege circumstances showing that this matter meets any of the Court's criteria.

A. Even Taking the Petitioner's Allegations as True, the Petitioner Has Failed to State a Constitutional Claim Against Respondent Dr. Hill.

The only allegations made by the Petitioner that could refer to Dr. Hill are that Dr. Hill, as part of the medical staff at Talladega Prison Camp "fraudulently communicated the medical condition of the Plaintiff to the warden and the Assistant United States Attorney." (Pet. at 3). The Petition also alleges that the Plaintiff's placement in the Segregated Housing Unit, where he allegedly slept on a

concrete floor, caused "the unnecessary and wanton infliction of pain . . . " *Id.* Although the Petition does not show who ordered that the Petitioner be placed in the Segregated Housing Unit, the Petitioner's complaint does not allege that Dr. Hill had any part in the decision. The Respondent, Dr. Hill, does not deny that the government, whether through its own employees or through non-governmental physicians, must provide medical care to prisoners. Dr. Hill denies that the Petitioner has alleged conduct on the part of Dr. Hill that evinces "deliberate indifference" to the Petitioner's medical needs. In *Estelle v. Gamble*, 429 U.S. 97, 102, 97 S.Ct. 285, 290 (1976), this Court found that the government had an "obligation to provide medical care for those whom it is punishing by incarceration." The Court held "that deliberate indifference to serious medical needs of prisoners constitutes the 'unnecessary and wanton infliction of pain,' proscribed by the Eighth Amendment . . . Regardless of how evidenced, deliberate indifference to a prisoner's serious illness or injury states a cause of action under Section 1983." *Id.* at 104, 205, 291 (citing *Gregg v. Georgia*, 428 U.S. 153, 96 S.Ct. 2909, 49 L.Ed. 2d 859 (1976) (footnotes and additional citations omitted). However, the Court also stated:

> This conclusion does not mean, however, that every claim by a prisoner that he has not received adequate medical treatment states a violation of the Eighth Amendment. An accident, although it may produce added anguish, is not on that basis alone to be characterized as wanton infliction of unnecessary pain . . . Similarly, in the medical context, an inadvertent failure to provide adequate medical care cannot be said to constitute "an unnecessary and wanton infliction of pain" or to be "repugnant to the conscience of mankind." Thus, a complaint that a physician

> has been negligent in diagnosing or treating a medical condition does not state a valid claim of medical mistreatment under the Eighth Amendment. Medical malpractice does not become a constitutional violation merely because the victim is a prisoner. In order to state a cognizable claim, a prisoner must allege acts or omissions sufficiently harmful to evidence deliberate indifference to serious medical needs. It is only such indifference that can offend "evolving standards of decency" in violation of the Eighth Amendment. *Estelle*, 429 U.S. at 105-106, 97 Sup.Ct. at 291-92.

The record in this case shows that the Petitioner's allegations against Dr. Hill amount, at most, to state law claims of either malpractice or fraud. The Petitioner alleged that he had a severe back injury, specifically a herniated disk. According to the Petitioner's Complaint and Amended Complaints, Dr. Hill, by not prescribing the amount of pain medication, therapy, or exercise the Petitioner believed was required, was part of a "conspiracy" to reduce medical costs and thereby increase the income of unspecified defendants. The Petitioner essentially states that he disagreed with Dr. Hill's recommendations for treatment. A disagreement over proper treatment or diagnosis of an alleged medical condition does not rise to the level of a constitutional violation. The Petitioner states, if anything, that Dr. Hill committed malpractice by providing incorrect or inadequate medical treatment. Malpractice is a state law cause of action. This Court's decision in *Estelle* plainly foreclosed an inmate's resort to claims of Eighth Amendment violations for simple medical malpractice. As this Court firmly found in *Estelle*, medical malpractice, although it may have serious consequences for the patient, cannot rise to the level of a constitutional

violation, despite the fact that the alleged malpractice occurred in a prison setting.

The Petitioner's conspiracy claim as stated against the Respondent, Dr. Hill, similarly fails to reach the level of a constitutional violation. The Petitioner's complaint further alleged that Dr. Hill conspired with other physicians and the warden to prescribe insufficient pain medication, therapy, and exercise. The Petitioner's claims are virtually identical to those of the prisoner in *Estelle*, *supra*. There, the prisoner, Gamble, contended that "his complaint [was] 'based solely on the lack of diagnosis and inadequate treatment of his back injury.' The doctors diagnosed his injury . . . [but] Respondent contend[ed] that more should have been done by way of diagnosis and treatment, and suggest[ed] a number of options that were not pursued." *Estelle*, 429 U.S. at 107, 97 S.Ct. at 292-93. (Internal citations omitted). This Court stated that "the question whether . . . additional diagnostic techniques or forms of treatment is indicated is a classic example of a matter for medical judgment. A medical decision not to order an X-ray, or like measures, does not represent cruel and unusual punishment. At most it is medical malpractice . . . " *Id.* at 107, 293.

In this case, as well, the Petitioner seeks to hold the Respondent, Dr. Hill, liable under federal constitutional law for what is at heart a difference of opinion with respect to diagnosis and treatment. This Court's precedents hold that resolution of such a difference of opinion must be resolved through the state courts by means of state malpractice law.

The Petitioner's allegations against Dr. Hill fail to meet the definition of "deliberate indifference." In *Whitley*

v. Albers, 475 U.S. 312, 319, 106 S.Ct. 1078, 1084 (1986), this Court stated that:

> To be cruel and unusual punishment, conduct that does not purport to be punishment at all must involve more than ordinary lack of due care for the prisoner's interests or safety. This reading of the Clause underlies our decision in *Estelle v. Gamble*, *supra*, at 105-106, 97 S.Ct. at 291-292, which held that a prison physician's "negligen[ce] in diagnosing or treating a medical condition" did not suffice to make out a claim of cruel and unusual punishment. It is obduracy and wantonness, not inadvertence or error in good faith, that characterize the conduct prohibited by the Cruel and Unusual Punishments Clause, whether that conduct occurs in connection with establishing conditions of confinement, supplying medical needs, or restoring official control over a tumultuous cell block.

The Petitioner made no allegations against Dr. Hill that would rise to the level of "obduracy and wantonness." The Petitioner alleged that Dr. Hill did not prescribe medications and other treatment that, in the Petitioner's opinion, would adequately treat his medical condition. That inadequacy, even if true, would not qualify as "deliberate indifference."

To the extent that the Petitioner alleges that Dr. Hill knew that the Petitioner had a severe back injury and "fraudulently" communicated a different diagnosis to prison authorities, that claim also fails to rise to the level of a constitutional violation. Again, the Petitioner has, if anything, stated a state law claim for fraud. The Petitioner has failed to show how an alleged misrepresentation

concerning his medical condition could be a constitutional violation.

The district court and the Court of Appeals for the Eleventh Circuit correctly found that the Petitioner had failed to state a claim for which relief could be granted.

CONCLUSION

For the foregoing reasons, the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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No. 03-183

In The
Supreme Court of the United States

JESSE WOODROW SHOTTS,
Petitioner,

v.

MICHAEL RASMUSSEN, alias Mr. Mike, et al.,
Respondents.

On Petition For a Writ of Certiorari
To The United States Court of Appeals
For The Eleventh Circuit

REPLY BRIEF OF PETITIONER, JESSE WOODROW SHOTTS

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TABLE OF AUTHORITIES

Cases

Cruz v. Beto,
405 U.S. 319, 31 L.Ed.2d, 263, 92 S.Ct. 1079.....2

Mitchell v. Forsyth,
472 U.S. 511.....2

U.S. v. Lanier,
520 U.S. 259 (1997).....1

Whitley v. Albers,
475 U.S. 312, 319 (1986).....1

REASONS FOR GRANTING WRIT

The cases cited by Thomas do not apply to the facts and law concerning these circumstances.

When the defendants' were subpoenaed and received the witness and mileage check, they pretended that they had been bribed by Shotts and immediately placed Shotts in SHU pending investigation of bribery, Thomas' brief alluded to the attempt to bribe the health care witnesses still of the pretense that the required witness and mileage checks, was an attempt to bribe her.

Thomas and Hill colluded with the medical staff at Talladega Prison to deny proper medial treatment to Shotts and when exposed, retaliated against him by placing him in the SHU. This activity by the only licensed medical doctors at Talladega, forsake their patient, their profession, and their country.

Hill's brief is in the nature of a confession and avoidance by admitting malpractice (which is not actionable) and denying that he acted with others in the denial of medical benefits. The problem with his denial in that Dr. Butler's report of the herniated disc is so simple that the doctor's assistance rightfully interpreted it. The action by Hill and Thomas is inescapable that they were in concert with Berrios and the other defendants.

The holding by the Court of Appeals in contrary to the comforts of U.S. v. Lanier, 520 U.S. 259 (1997) which provides that defendants have "fair warning" that their alleged treatment is unconstitutional. The denial of adequate pain medication and causing to sleep on a concrete floor "unnecessary and wantonly inflicted pain" which is a clear violation of the Eighth Amendment. Whitley v. Albers, 475 U.S. 312, 319 (1986).

The Court of Appeals decision granted absolute immunity to the defendants for that the conspiracy includes an Assistant U.S. Attorney and two probation officers. Mitchell v. Forsyth, 472 U.S. 511 eliminated the concept that U.S. Attorneys have absolute immunity and that the probation officer does not have absolute immunity for administrative or investigative activities. After Rasmussen and Alexander were exposed for presenting a fraudulently written letter from Berrios, (chief medical officer at Talladega) at the aborted sentencing of January 2001, they began a series of retaliation against Shotts which was heighten when the medical staff was subpoenaed. The retaliation is prohibited in Cruz v. Beto, 405 U.S. 319, 31 L.Ed.2d, 263, 92 S.Ct. 1079 and there is no absolute immunity for the acts of any of the defendants.

SUMMARY

This is a conspiracy led by Rasmussen, Assistant U.S. Attorney for the Northern District of Alabama wherein winning is the only thing. The other defendants played ball with Rasmussen on the concept that "all" would have absolute immunity for "any" act to convicts and that he was in a position to protect all the defendants from any action taken by a convict. The concept of absolute immunity extending to co-defendants and applying to renegade Assistant U.S. Attorneys is out dated and for these reasons, the writ should be granted.

Respectfully submitted,

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